

APPENDIX C

OPERATIONAL FUNDING PROBLEMS

NOTES

FACTS

I. Adventures in Central Europe.

You are the Chief of Administrative and Civil Law, Office of the Staff Judge Advocate, for an Army division. You deploy with the division to Bosnia-Herzegovina as part of a short-lived stabilization force (a contingency operation).

Shortly after your arrival, a subordinate captain comes to you for help. Among his many duties, he has the task of providing contract advice (he apparently saw a contract once before the unit's deployment). He tells you that the command has now inundated him with requests for opinions on a variety of issues that he has never seen before. Even matters that would be routine in a garrison environment become difficult because he's not sure how much the rules change when a unit deploys. He asks for your help with several issues.

a. Upon its arrival, the division headquarters moved onto a base occupied for the past year by another U.S. division. The G-1 wants to convert a multi-story building on the base, which the previous division had used as a barracks, to an administrative facility. The division engineer (DIVENG) advises that the work will include: (1) the replacement of the roof, the flooring, and some interior walls; (2) the repair of other failing components of the building; (3) the installation of new Heating, Ventilating, and Air Conditioning (HVAC) equipment; and (4) the construction of new walls to accommodate the new configuration. The engineer proposes classifying the project as mostly repair, with a small amount as construction work. He estimates the cost of all work at \$1.8 million. Because the construction work will only cost \$457,000, the division engineer contends that the entire project can be funded with O&M funds. Is the division engineer right?

MAJ Kevin M. Walker
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b. The JTF Commander is concerned about the farmers in the local area. Many members of local militia groups on both sides of the conflict are farmers. There is no diesel fuel available on the local economy to run farm equipment to collect the harvest for the coming winter. The farmers are idle and the Commander wants to keep the farmers busy and reduce the need for relief supplies. The JTF Commander wants to conduct refueling missions and provide 10 gallons of diesel fuel per week to each farmer. The commander intends to send HEMMT tankers into the countryside to set up temporary “gas stations.” Can we give fuel to the farmers? How?

c. The G-4 wants to build (or procure) several storage facilities to ease the space crunch the division is facing. Lumber and other construction materials are difficult to come by locally. The division engineer assets could construct the facilities, but the raw materials would cost an estimated \$275,000. As an alternative solution, the G-4 is considering purchasing three portable, prefabricated storage facilities from an American manufacturer at a cost of \$65,000 each. He is inclined to go this route because he could move the prefab buildings and reuse them later on other missions. The G-4 has about \$400,000 in O&M funds available for this effort. What do you advise?

d. A brigade supply officer was swamped with requests for blankets when the weather turned unseasonably cold. He located a blanket factory with 1500 blankets in stock, and arranged delivery after agreeing that the U.S. Government would pay the wholesale price of \$12 per blanket. What should the division finance officer do when the factory owner shows up with an invoice for \$18,000 worth of blankets and asks to be paid? Does it matter who the blankets are for?

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e. The G-1 comes to you for advice on one of her current projects. The Chief of Staff has tasked her to come up with alternative MWR opportunities for the JTF troops. She advises you that soldiers are generally restricted to the confines of their basecamps unless on a mission, are not authorized to wear civilian clothes, and have very limited morale, welfare, and recreation (MWR) activities available within the basecamps. Due to the hardships of the operation, she would like to transport soldiers to secure recreational sites.

One of her ideas is to renovate an old ski resort that is nearly adjacent to the base camp. She wants to know if the JTF could use CONOPS funds to hire a contractor to perform the renovation? In addition, she asks whether, once the renovation is complete, the JTF could use CONOPS funds to bus troops to the resort and to pay for lift tickets so they can ski? How do you analyze these issues? What additional facts do you need before you can even start preparing your legal opinion?

II. Adventures in Haiti.

As the newly assigned Staff Judge Advocate for the Joint Logistics Support Element, you have just deployed to Haiti in support of a United Nations (UN)-authorized peacekeeping operation. Although one of your primary missions is to advise the command on procurement law issues, you haven't been too worried about that since we have a Logistics Civil Augmentation Program (LOGCAP) contract to take care of our support requirements. Shortly after your arrival in country, however, you find yourself grappling with the following issues:

a. Your JTF is the U.S. component of the United Nations force in Haiti. As part of their responsibilities for the U.N. Force, the U-4 provides Class I (Subsistence) items to the member components of the force. Your J-4 comes to you with the following problem. "Judge, the U-4 has given us 10,000 pounds of frozen beef to feed our troops. The Preventative Medicine (PVNTMED) detachment has conducted their normal food checks and determined the meat is unsuitable for consumption by U.S. personnel, but the meat is fit for human consumption and is not a danger. The U.N. will not take it back and I need to get it out of the freezer to make room for incoming food. The Commander has accepted the PVNTMED section's recommendation not to feed this meat to our troops. Can I give it to the Haitians to feed their people?" As your career flashes before your eyes, you think quick and say?

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b. The Chief of Staff wants to know whether we can provide supplies and equipment free of charge to the Department of Justice (DOJ) in support of their training of the Haitian police force. If we can't provide the supplies for free, is there a legal way that DOJ can buy them from us?

c. You are still assigned to the U.S. component of the United Nations force in Haiti. The JTF Surgeon comes to you one day with the following concern.

As you know, we are in the process of rehabilitating the University Hospital as part of an approved HCA project. Our assigned RED HORSE engineer flight is working very hard, under my office's supervision, to get the hospital back into a useable shape. I'm very concerned about the working conditions in the hospital. My engineers and my medical personnel must work directly across the hall from the morgue. As you know, there is a moratorium on burials in Port-au-Prince. The bodies are literally stacking up in the morgue and I am concerned with the physical and mental well being of the troops working in the hospital. Can we give the Haitians 400 body-bag liners? Judge, they're only \$1.78 a piece, but they would help prevent the spread of disease and would make sure our troops don't have to see the bodies every day. What do you say judge? Can we also build a door on the morgue?

III. Adventures in Washington, D.C.

Your adroit legal opinions have resulted in your assignment to the Office of Legal Counsel to the Chairman, Joint Chiefs of Staff. You now receive a tasker from the Director of the Joint Staff to review a request from the Commander, Joint Forces Command regarding HCA activities in Haiti. Attached is a copy of the CINC's request. How do you respond?



COMMANDER IN CHIEF
U.S. JOINT FORCES COMMAND

MEMORANDUM FOR THE CHAIRMAN, JOINT CHIEFS OF STAFF

Sir, as you know we are in the process of deploying Air Force engineers to Haiti to renovate and repair several schools and the University Hospital. While they definitely provide great training opportunities for our engineers and will improve the life of some of the Haitian people, we need to do something that will make a difference for a larger part of the population. The infrastructure projects we originally proposed to do would make a significant impact on the general population.

I understand the legal implications associated with the infrastructure projects but I would propose that we need to revisit the issue and try to do some of the infrastructure projects we previously forwarded, especially the road and water repair projects. Several of the roadways are major military supply routes in Haiti for U.S. and UN forces, such as National Route 1 and Delmas Road, which could be repaired for \$660,000 and \$200,000 respectively. For the Air Force engineers, the repair and overlay of the roadway is rudimentary construction and good training for their mission tasking. The repair of these MSR's would greatly assist and benefit the mobility and sustainment of our forces in Haiti, and I believe should be done if possible. A scaled down repair project to supply water to City Soleil, which meets rudimentary construction standards, should also be considered. There would also be an ancillary benefit to the Government of Haiti, since this work would dramatically improve the lives of many Haitian people.

In lieu of using scarce DOD O&M funding, we are continuing to pursue other possible sources of funding in Haiti, such as USAID, Inter-American Development Bank, the Haitian Development Fund and the Central Implementation Unit (CIU). Any assistance you can provide in freeing DOS/AID money or facilitating international donor support would be appreciated.

Request your support in having your legal and fiscal offices quickly review the options available in supporting the use of U.S. Military engineers and material in the reconstruction of these vital roads and waterworks projects before we run out of time while these projects are being staffed to death.

J. J. SHEEHAN
General, U.S. Marine Corps